



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 6691-99  
8 February 2000

SGTMAI [REDACTED] USMC  
[REDACTED]

Dear Sergeant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 22 October 1999, a copy of which is attached. They also considered your undated rebuttal letter and the undated statement on your behalf from a retired Marine Corps sergeant major.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. They found your commanding general's comments, to the effect that some of your marks should have been higher, are a matter of record which did not invalidate the contested adverse fitness report they address. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

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Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

6691-99

IN REPLY REFER TO:  
1610  
MMER/PERB  
OCT 22 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
SERGEANT MAJOR [REDACTED], 2 [REDACTED] SMC

Ref: (a) SgtMaj [REDACTED] Form 149 of 19 Aug 99  
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 21 October 1999 to consider Sergeant Major [REDACTED] request contained in reference (a). Removal of the fitness report for the period 980306 to 980814 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that both the Reporting Senior (Lieutenant Colonel [REDACTED]) and Reviewing Officer (Colonel [REDACTED]) did not report factual information or assign just/fair grades. To support his appeal, the petitioner furnishes a copy of the fitness report and a copy of the Competency Review Board (CRB) package.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The report at issue, rendered adverse because of the petitioner's relief for cause due to the Reporting Senior lost trust and confidence in his abilities, was properly referred to him for acknowledgment. He submitted his rebuttal; the Reviewing Officer properly adjudicated the report; the petitioner made an additional comment; and the report was finally third sighted by Major General [REDACTED] who added his own commentary upholding the validity of the overall evaluation.

b. The petitioner provides no substantial or convincing documentation that the fitness report is not factual and accurate. In fact, the 22 September 1998 Preliminary Inquiry by Lieutenant Colonel [REDACTED] a copy of which is included in reference (a)) clearly documents his questionable conduct in handling the sexual harassment and drug incident in question. Further, the statements of the individuals interviewed by the

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Investigating Officer (Lieutenant Colonel [REDACTED]) into question the petitioner's lack of judgment regarding these incidents.

c. It is clear that the petitioner initially failed to recognize the seriousness of Staff Sergeant [REDACTED] action that ultimately resulted in the Commanding Officer, Marine Aircraft Group-14 awarding him nonjudicial punishment (NJP) for sexual harassment and assault. The evidence in the Preliminary Inquiry showed the petitioner attempted to obfuscate the situation by his manipulative actions, and by making misleading and false statements.

d. The Board does not accept Maj [REDACTED] statements with much credibility. He was the Executive Officer, Marine Wing Headquarters Squadron-2 and was also relieved for exhibiting the very same lack of judgment and inaction that caused the petitioner's relief.

e. The challenged fitness report was based on poor judgment and the petitioner's failure to take immediate and proper leadership action regarding two incidents involving enlisted Marines in his Squadron. The purpose of the CRB, however, was to determine if the petitioner's leadership and judgmental failures were endemic; not to exonerate him of those failures. There is no documentation from the CRB findings and recommendations to the contrary. The CRB was not chartered to overturn the valid actions of the Commanding Officer or to reinstate the petitioner as the Squadron Sergeant Major.

f. The fact that there was a previous version of the fitness report does not somehow invalidate the report of record. The Board points out that the reporting officials had an obligation and responsibility to ensure the final document contained an honest and accurate portrayal of the facts. Interestingly, the report of record is actually a relatively less adverse evaluation than the initial iteration. Regardless, the Board finds nothing substantive in reference (a) that was not known or otherwise available to the reporting officials when they rendered their evaluations.

4. The Board's opinion, based on deliberation and secret ballot vote is that the contested fitness report should remain a part of Sergeant Major [REDACTED] official military record.

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5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps